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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,744	02/27/2004	Angela M. DeShazer	3966P2607pro	6110
23504	7590	05/03/2005	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 05/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

**Office Action Summary**

Application No.

10/788,744

Applicant(s)

DESHAZER, ANGELA M.

Examiner

Gregory Pickett

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1, 2, and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Scott (US 5,085,320).

Regarding claim 1, Scott discloses a sports ball carry bag (Figure 1) with a sports ball **10**, opening (seam on which fastener **24** is mounted), and handle **26** located proximate the opening.

As to claim 2, Scott discloses a basketball.

As to claim 10, Scott discloses design **28**.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
2. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott in view of Lucas (Des. 335,956; hereinafter Lucas '956).

Scott discloses the claimed invention except for the specific ball type. Lucas '956 discloses that it was desirable in the art to have bags in the shape of different balls. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Scott in the shape of a volleyball, football or tennis ball in order to simulate the retained ball. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. A change in aesthetic (ornamental) design generally will not support patentability. *In re Seid*, 73 USPQ 431.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Scott in view of Meyers (US 4,754,790).

Scott discloses the claimed invention except for the flap.

As evidenced by Meyers, the provision of flaps to cover and hide a zipper was common and conventional in the handbag art (see Meyers Col. 4, lines 32-36). It would

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have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Scott with a flap as taught by Meyers in order to hide the zipper from view and further enhance the appearance.

4. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas (Des. 346,273; hereinafter Lucas '273) in view of Scott.

Regarding claim 1, Lucas discloses a carry bag with a ball, a handle, and what appears to be an opening (portion that looks like a zipper in Figure 3). Scott discloses a zipper **24** to open the bag (thereby forming an opening). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas '273 with a zipper and opening as taught by Scott in order to access the interior of the bag. It would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the bag of Lucas '273 from the materials of Scott in order to have a bag that is durable and inexpensive to manufacture (Scott Col. 1, lines 43-46).

As to claim 2, both Lucas '273 and Scott disclose basketballs.

5. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas-Scott as applied to claim 1 above, and further in view of Halpin (US 1,927,492).

Lucas-Scott discloses the claimed invention except for the support base/feet.

Halpin discloses support base/feet **20**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-

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Scott with support base/feet as taught by Halpin in order to prevent the bag from rolling when placed on a surface.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas-Scott as applied to claim 1 above, and further in view of Jantzen (US 5,009,319).

Lucas-Scott discloses the claimed invention except for the inner fabric liner.

Jantzen discloses an inner fabric liner **43** for the removal of all bag contents at once (Col. 7, lines 6-7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott with a fabric liner as taught by Jantzen in order to enable removal of all bag contents at once.

7. Claims 11, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas-Scott as applied to claim 1 above, and further in view of Jeffs (US 1,404,528).

Lucas-Scott discloses the claimed invention except for the support ribs and base plate.

Jeffs discloses a handbag with base plate **a** and support ribs **b**, **b'**, **c** & **c'** coupled to one another by means of base plate **a**, and used to assist in opening the bag (page 1, lines 34-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott with a base plate and ribs as taught by Jeffs in order to assist in opening the bag.

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8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas-Scott-Jeffs as applied to claim 11 above, and further in view of Jantzen.

Lucas-Scott-Jeffs discloses the claimed invention except for the inner fabric liner.

Jantzen discloses an inner fabric liner **43** for the removal of all bag contents at once (Col. 7, lines 6-7). Jantzen attaches the liner to bag stiffeners **55** by means of hook-and-loop fasteners **49** and **51**. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott-Jeffs with a fabric liner as taught by Jantzen in order to enable removal of all bag contents at once.

9. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas-Scott-Jeffs as applied to claim 11 above, and further in view of Tibbs (Des. 235,693).

Lucas-Scott-Jeffs discloses the claimed invention except for the external support base.

Tibbs discloses an external support base (nubs at bottom of bag in Figures 2 and 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott-Jeffs with an external support base as taught by Tibbs in order to prevent the bag from rolling when placed on a surface.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas '273 in view of Scott, Jeffs, Meyers, Jantzen, and Tibbs.

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Lucas discloses a carry bag with a basketball, a handle, and what appears to be an opening (portion that looks like a zipper in Figure 3). Scott discloses a zipper **24** to open the bag (thereby forming an opening). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas '273 with a zipper and opening as taught by Scott in order to access the interior of the bag. It would have been obvious to one of ordinary skill in the art at the time the invention was made to fabricate the bag of Lucas '273 from the materials of Scott in order to have a bag that is durable and inexpensive to manufacture (Scott Col. 1, lines 43-46).

As evidenced by Meyers, the provision of flaps to cover and hide a zipper was common and conventional in the handbag art (see Meyers Col. 4, lines 32-36). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott with a flap as taught by Meyers in order to hide the zipper from view and further enhance the appearance.

As to the ribs, Jeffs discloses a handbag with base plate **a** and support ribs **b**, **b'**, **c** & **c'** coupled to one another by means of base plate **a**, and used to assist in opening the bag (page 1, lines 34-43). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott-Meyers with a base plate and ribs as taught by Jeffs in order to assist in opening the bag.

As to the inner fabric liner, Jantzen discloses an inner fabric liner **43** for the removal of all bag contents at once (Col. 7, lines 6-7). Jantzen attaches the liner to bag stiffeners **55** by means of hook-and-loop fasteners **49** and **51**. It would have been



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obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott-Meyers-Jeffs with a fabric liner as taught by Jantzen in order to enable removal of all bag contents at once.

As to the support base, Tibbs discloses an external support base (nubs at bottom of bag in Figures 2 and 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the bag of Lucas-Scott-Meyers-Jeffs-Jantzen with an external support base as taught by Tibbs in order to prevent the bag from rolling when placed on a surface.

### ***Conclusion***


11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

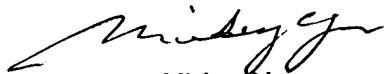
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Greg Pickett  
Examiner  
26 April 2005

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700